

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	§	Chapter 11
	§	
W.R. GRACE & CO., et al.,	§	Jointly Administered
	§	Case No. 01-01139 (JKF)
Debtors.	§	
	§	

**FEE AUDITOR'S FINAL REPORT REGARDING FORTY-FIRST
INTERIM FEE APPLICATION OF CAPLIN & DRYSDALE, CHARTERED**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Forty-First Interim Fee Application of Caplin & Drysdale, Chartered (the "Application").

BACKGROUND

1. Caplin & Drysdale, Chartered ("Caplin & Drysdale"), was retained as counsel to the Official Committee of Asbestos Personal Injury Claimants. In the Application, Caplin & Drysdale seeks approval of fees totaling \$677,126.75 and expenses totaling \$27,543.92 for its services from April 1, 2011 through June 30, 2011 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2011, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with

precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Caplin & Drysdale based upon our review, and we received a response from Caplin & Drysdale, portions of which response are quoted herein.

DISCUSSION

General Issues

3. We note for informational purposes that Caplin & Drysdale billed the time of attorney Elihu Inselbuch at \$1,000.00 per hour. During the current Application Period, Mr. Inselbuch billed 12.7 hours on the case, for \$12,700.00 in fees. In *In re USG Corporation*, Case No. 01-2094 (JKF), Transcript of Proceedings, July 19, 2004, p. 14, the Honorable Judith K. Fitzgerald asked that we call to the Court's attention any instance in which a professional's hourly rate reaches \$1,000.00, and thus we are complying with the Court's request.

Specific Time and Expense Entries

4. We noted that on June 22, 2011, attorneys Peter Van N. Lockwood (\$905), Jeffrey A. Liesemer (\$535), James P. Wehner (\$535), and Kevin C. Maclay (\$535) attended a meeting regarding oral argument preparation. The total time spent was 21.30 hours for total fees of \$13,085.00. See Exhibit A. Paragraph II.D.5. of the U.S. Trustee Guidelines provides: "If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees." We asked Caplin & Drysdale to explain why it was necessary for each attorney to attend this meeting, and Caplin & Drysdale responded:

The Fee Auditor inquires in paragraph 4 of the Initial Report regarding a meeting at Kirkland & Ellis concerning oral argument preparation, attended on June 22, 2011 ... by Caplin & Drysdale attorneys Peter N. Lockwood, Jeffrey A. Liesemer, James P. Wehner and Kevin C. Maclay. The meeting was held among the Plan Proponents

and pertained to preparation for oral argument in the appeal of the bankruptcy confirmation order to the District Court. Messrs. Wehner, Maclay and Liesemer had written different sections of the Plan Proponents' 150-plus page appellate brief, with each attorney responsible for a different element of the overall argument. Consequently, each was required to attend the June 2011 preparation meeting. Mr. Lockwood attended the meeting because he was the attorney who delivered the oral argument. Therefore, each Caplin & Drysdale attorney who attended the June 22 meeting made a separate contribution to the preparation of the oral argument; there was no duplication of services.

We appreciate Caplin & Drysdale's response and have no objection to these fees.

5. We noted the following air fares which, in the absence of additional information, appeared excessive:

2681263	Business Card - ADA Travel Reconciliation re: Coach Airfare to/from Pittsburgh, PA, 3/1/11 - 3/2/11 (PVNL)	04/11/2011	\$1,903.40
2681265	Business Card - ADA Travel Reconciliation re: Coach Airfare to/from Pittsburgh, PA, 3/1/11 - 3/2/11 (TWS)	04/11/2011	\$1,903.40

In response to our request, Caplin & Drysdale provided the following information concerning these air fares:

The air fares regarding which the Fee Auditor inquires in paragraph 5 of the Initial Report were refundable, coach fares. Refundable fares are, of course, generally more expensive than those that are non-refundable. In the past, however, Caplin & Drysdale has had to cancel trips, either because hearings were adjourned, meetings were rescheduled or other scheduling changes occurred. Due to such cancellations, we have found it more economical to purchase refundable tickets at a higher cost, than lower-cost tickets for which we cannot receive refunds if trip schedules are altered. The trip to Pittsburgh on March 1-2, 2011 originated in Washington, D.C.

Based on our research of comparable air fares,¹ we accept Caplin & Drysdale's response and have

¹Caplin & Drysdale also advised us that the flights were taken on US Airways, and thus we obtained our information from www.usair.com. We confirmed that these fares were refundable, and that they were not the more expensive "Y" economy fares.

no objection to these expenses.

6. We noted a total of \$21,703.69 in Westlaw charges for the Application Period. We asked Caplin & Drysdale to confirm that these charges were billed at the firm's actual cost, and Caplin & Drysdale responded:

The \$21,703.69 in Westlaw charges for the Application Period represents the actual cost to the firm of such services, including a discounted rate provided to Caplin & Drysdale by Westlaw.

We appreciate Caplin & Drysdale's response and have no objection to this expense.

7. We noted the following expense entries which are almost identical:

TEP

2706579	Yellow Cab Company of D.C., Inc. Svc. to E	06/17/20110369
0.00	\$41.69 N. Bethesda, 5/4/11 (TEP)	

TEP

2706580	Yellow Cab Company of D.C., Inc. Svc. to E	06/17/20110369
0.00	\$41.40 N. Bethesda, 5/4/11 (TEP)	

We asked Caplin & Drysdale to confirm that these were not duplicate expense entries, and Caplin & Drysdale responded:

The second taxi charge (#2706580) included in the Application and referenced in paragraph 7 of the Initial Report, is a duplicate. Caplin & Drysdale apologizes for the clerical error.


We appreciate Caplin & Drysdale's response and recommend a reduction of \$41.40 in expenses.

CONCLUSION

8. Thus, we recommend approval of \$677,126.75 in fees and \$27,502.52 in expenses (\$27,543.92 minus \$41.40) for Caplin & Drysdale's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 
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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 12th day of October, 2011.


Warren H. Smith

SERVICE LIST

Notice Parties

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EXHIBIT A

06/22/11	JAL	535.00	4.80	2,568.00	Meeting w/Plan Proponents counsel re: oral argument preparation.
06/22/11	JPW	535.00	5.10	2,728.50	Meeting at K&E re district court argument (5.1);.....
06/22/11	KCM	535.00	5.90	3,156.50	Plan/prepare for Plan Proponents meeting and review/analyze related briefs and materials (1.4); attend Plan Proponents meeting re oral argument (4.5);.....
06/22/11	PVL	905.00	4.90	4,434.50	Cn Donley, Esayian, Paul, Baer, Frankel, Wyron, JAL, KCM and JPW re hearing prep (4.9);.....
06/22/11	PVL	452.50	0.20	90.50	Travel to K&E
06/22/11	JAL	267.50	0.20	53.50	Travel to Kirkland & Ellis office for meeting on oral argument preparation.
06/22/11	JAL	267.50	0.20	53.50	Return travel from Kirkland & Ellis office following meetings on oral argument preparation.